

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT - E.D.N.Y.

TEMPUR WORLD LLC, TEMPUR-PEDIC, INC.,
and DAN-FOAM ApS,

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BROOKLYN OFFICE

Plaintiffs,

v.

Case No.: CV-05-1335
(JG) (VVP)

DREAM ON ME INDUSTRIES, INC.,

Defendant.

CONSENT JUDGMENT

This matter, having come on for consideration upon the complaint of the Plaintiffs, Tempur World, LLC, Tempur-Pedic, Inc. and Dan Foam ApS (hereinafter collectively "Tempur-Pedic") for trademark infringement and related claims; and the parties having stipulated to the entry of a permanent injunction against defendant Dream on Me Industries, Inc. ("Defendant") under the terms provided herein:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Court has jurisdiction over this action under the laws of the United States, 15 U.S.C. § 1051 et seq., and 28 U.S.C. §§ 1332(a) and 1338 and over the parties to this suit. The claims arising under the laws of the State of Florida are joined with substantial and related claims under the trademark laws of the United States.

2. As alleged in the Complaint filed in this action, Tempur-Pedic is the owner of the following trademarks and the United States registrations therefor ("the Tempur-Pedic

Trademarks”), copies of which are attached hereto at Exhibit A: (a) SWEDISH SLEEP SYSTEM, Reg. No. 2,452,364; (b) TEMPUR, Reg. No. 1,926,469; (c) TEMPUR-PEDIC, Reg. No. 1,853,088; and (d) TEMPUR & DESIGN, Reg. No. 2,495,299.

3. The Tempur-Pedic Trademarks are valid and enforceable and constitute trademarks of Tempur-Pedic for the goods and services listed in the registrations therefor and substantially related goods and services.

4. Defendant has used the Tempur-Pedic Trademarks and colorable imitations thereof in a manner that is likely to cause confusion, mistake and deception as to whether Defendant is an authorized dealer of Tempur-Pedic.

5. Defendant acknowledges the existence and validity in the United States of Tempur-Pedic’s Trademarks and the ownership thereof by Tempur-Pedic.

6. Defendant and its agents, employees, servants, representatives, successors and assigns and affiliates, and any and all persons acting in concert with them (collectively “the Enjoined Persons”) are permanently and perpetually enjoined and restrained from either directly or indirectly:

(a) using or aiding, abetting, or inducing any third party to use without authorization as part of any URL, domain name, directory name, or other computer address or as part of the name of any web-site service, or in buried code or metatags in any home page or web pages:

(i) any of the Tempur-Pedic Trademarks, either alone or in combination with other words or design elements; or

(ii) any colorable imitation or variation of any of the Tempur-Pedic Trademarks, including without limitation the terms “temperature sensitive pedic,”

or "temperature pedic;"

(b) using or aiding, abetting, or inducing any third party to use misspellings, derivations, variations, composites, or other distorted versions of any of the Tempur-Pedic Trademarks, regardless of whether it is or is not in connection with genuine Tempur-Pedic products;

(c) using or aiding, abetting, or inducing any third party to use:

(i) any of the Tempur-Pedic Trademarks, either alone or in combination with other words or design elements; or

(ii) any colorable imitation or variation of any of the Tempur-Pedic Trademarks;

on or in connection with any products not originating entirely with or authorized by Tempur-Pedic;

(d) further diluting or infringing the rights of Tempur-Pedic in and to the Tempur-Pedic Trademarks;

(e) otherwise competing unfairly with Tempur-Pedic in any manner; or

(f) engaging in any deceptive or unfair trade practices or in any untrue, deceptive or misleading advertising involving Tempur-Pedic or the Tempur-Pedic Trademarks or variations thereof.

The foregoing provisions shall take effect in accordance with the time frames set forth hereinafter.

7. Notwithstanding the provisions set forth in paragraph 6 above, Defendant shall have ten (10) days from the date of entry of this Consent Judgment to bring all of its websites, advertising and promotional materials under the control of any of the Enjoined Persons

and all other materials in the possession, custody, or control of the Enjoined Persons into compliance with paragraph 6 above. Further, Defendant shall immediately withdraw its Application No. 76-625602, seeking registration as the principal owner of the trademark TEMPERPEDIC MATTRESS.

8. In the event that Defendant violates any provision of this Consent Judgment, Tempur-Pedic shall immediately be entitled to liquidated damages in the amount of \$5,000 per each individual violation as compensation and not as a penalty, it being understood that the damage caused by such a violation would be difficult to determine. Tempur-Pedic shall also be entitled to reasonable attorney's fees and costs in seeking relief from Defendant's violation(s).

9. If Tempur-Pedic discovers any offensive terms, statements, content or language on Defendant's or the Enjoined Persons' Internet websites or in other content in the possession, custody, or control of any Enjoined Persons that do not comply with the provisions of this Consent Judgment, Tempur-Pedic may apply to this Court for an order for contempt and imposition of sanctions. The Defendant shall be served with copies of any such contempt application and shall have the opportunity to oppose same.

10. Jurisdiction is retained by this Court for the purpose of ensuring compliance with the terms of this Consent Judgment and for enabling the parties to apply to this Court for further orders.

IT IS SO ORDERED.

Dated this 12 day of December, 2005.

BY THE COURT:

s/John Gleeson

United States District Judge

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STIPULATION FOR ENTRY OF CONSENT JUDGMENT

The parties hereby stipulate to the entry of a consent judgment in this case in the form submitted herewith and request that the Court enter the same.

Dated this 1st day of December, 2005.

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EXHIBIT A

**TEMPUR-PEDIC TRADEMARKS & CORRESPONDING REGISTRATION
CERTIFICATES**

TEMPUR MED	1,924,637
TEMPUR	1,926,469
TEMPUR & DESIGN	2,495,299



TEMPUR-PEDIC	1,853,088
SWEDISH SLEEP SYSTEM	2,452,364